

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MELODY A. E. WINTERS,)	
)	
Plaintiff,)	
)	
vs.)	No. <u>04-2003 Ma/P</u>
)	
JOHN W. SNOW, SECRETARY,)	
UNITED STATES DEPARTMENT OF)	
THE TREASURY,)	
)	
Defendant.)	

ORDER GRANTING PLAINTIFF'S DEMAND FOR JURY TRIAL

Before the court is plaintiff Melody Winters's Demand for Jury Trial, filed March 27, 2006 (dkt #54). Defendant, by and through the United States Attorney for the Western District of Tennessee, filed a response in opposition on April 7, 2006. For the reasons below, the motion is GRANTED.

I. BACKGROUND

On January 6, 2004, plaintiff Melody Winters filed a *pro se* complaint alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. Her complaint did not include a jury demand. On June 23, 2004, Assistant United States Attorney Sidney Alexander notified plaintiff that because she had not requested a jury trial in her complaint, the proposed scheduling

order that would be submitted to the court would reflect a non-jury trial. (Def.'s Ex. 1 at 1). On July 14, 2004, the court entered a Rule 16(b) scheduling order, which noted that although the case was set for a non-jury trial, "Plaintiff intends to file a motion requesting a jury trial." Rule 16(b) Scheduling Order, July 14, 2004. On August 10, 2004, the court entered a Notice of Setting which provided that a three-day jury trial was set for May 23, 2005. The Notice indicated that "Plaintiff to file request for jury trial." On March 3, 2006, the court entered a Notice of Re-setting which continued the trial to January 16, 2007. The Notice of Re-setting again stated that plaintiff was expected to file a motion for jury trial. Winters filed this motion on March 27, 2006.

II. ANALYSIS

In a case in which a party has a right to a trial by jury, a demand for a jury trial must be made by "serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue" Fed. R. Civ. P. 38(b). Although a failure to make this timely demand results in a waiver of the right, see Fed. R. Civ. P. 38(d), Rule 39 provides that "notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by

a jury of any or all issues." Fed. R. Civ. P. 39(b). A district court has broad discretion in ruling on a Rule 39(b) motion and should exercise such discretion in favor of granting a jury trial where there are no strong and compelling reasons to the contrary. Kitchen v. Chippewa Valley Schools, 825 F.2d 1004, 1013 (6th Cir. 1987).

The defendant cites Misco, Inc. v. Steel Corp., 784 F.2d 198 (6th Cir. 1986), for the proposition that a court's denial of a Rule 39(b) motion based on mere inadvertence is generally not an abuse of discretion. Misco, however, certainly does not stand for the proposition that a court must deny a Rule 39(b) motion where the movant has failed timely to make a jury demand. Moreover, the Misco court stated that "[w]e note that different policy considerations may be applicable if the party . . . is proceeding *pro se*." Misco, 784 F.2d at 205 n.8.

In this case, Winters filed a *pro se* complaint. Although her *pro se* status alone does not excuse her failure to make a timely demand for a jury trial, her status should be taken into account by the court when determining whether there are compelling reasons to deny a Rule 39(b) motion. See Haines v. Kerner, 404 U.S. 519, 520 (1972); see also Moody v. Pepsi, 915 F.2d 201, 207 (6th Cir. 1990) (stating that "the court's discretion should be exercised in favor of granting a jury trial where there are no compelling reasons to the contrary"). In addition, Winters expressed her desire for a

jury trial early in the case, as reflected in the July 14, 2004 scheduling order and the notices setting trial. Moreover, the trial is not scheduled to begin until January 2007, and thus the defendant has sufficient time to prepare for a jury trial. Therefore, no prejudice or harm to the defendant will result from granting the motion.

III. CONCLUSION

Accordingly, plaintiff's Demand for Jury Trial is GRANTED.

IT IS SO ORDERED.

S/ Tu M. Pham

TU M. PHAM
United States Magistrate Judge

July 21, 2006

Date